

STATE OF MICHIGAN
COURT OF APPEALS

HOME-OWNERS INSURANCE COMPANY,

Plaintiff/Counter-Defendant-
Appellee,

v

THOMAS K. WELLINGER,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellant,

GERALD C. GRACE AGENCY, INC.

Third-Party Defendant-Appellee,

and

GARY WEINSTEIN,

Intervening Plaintiff.

UNPUBLISHED

August 5, 2008

No. 275472

Oakland Circuit Court

LC No. 05-070638-CK

Before: White, P.J., and Hoekstra and Schuette, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I join in the majority's affirmance as to the dismissal of Home-Owners. I also agree that Wellinger did not establish a genuine issue of material fact regarding whether Grace breached a duty to him in failing to notify him of the cancellation. However, I respectfully dissent regarding Wellinger's claim based on Grace's failure to inform him that he was not being given the insurance he requested.

Wellinger testified that consistent with his own past practices, he asked Grace for a one-year policy, and that while he was unable to recall whether Grace specifically told him he was getting a one-year policy, he knows that he asked for one and that he left believing he had paid for one. He testified that he did not fill out the application, did not see the entire application, and only recalls seeing the one page he signed, and that he basically signed the page, wrote the check and was out the door. This testimony established a genuine issue of material fact whether Grace, as an independent agent, negligently failed to clarify that he was unable to, and was not, providing the one-year policy Wellinger specifically requested, or, alternatively, whether under

Harts v Farmers Ins Exch, 461 Mich 1; 597 NW2d 47 (1999), Grace either misrepresented or failed to clarify that the coverage was for a shorter term than specifically requested by Wellinger.¹ Finally, given the remaining allegations, I disagree with the circuit court that expert testimony was required to establish that Grace violated the standard of care owed by an insurance agent.

I would affirm in part and reverse in part, and remand for further proceedings as to Grace.

/s/ Helene N. White

¹ There is no question that as a matter of contract law, Wellinger had a duty to read the insurance contract. However, Wellinger's own negligence has a different legal consequence in this negligence claim against Grace.